




{In Archive} Re: letter to KDHE - draft / start 

Chris Dudding to: Monica Wurtz

Cc: Diane Huffman, Ken Deason, Mary Mindrup, Stacie Tucker

05/19/2008 12:05 PM

Archive:

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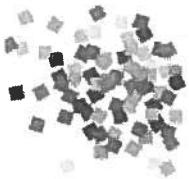
Diane and Stacie, et al.,

A few minor suggested edits (deleted "the" here, insert "has" there, etc.) from me:




EPA Ltr to KDHE about Pretty Prairie Nitrate Ltr 5.15.08.doc

Chris R. Dudding
Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101
913-551-7524
Facsimile 913-551-9524 or 7925
dudding.chris@epa.gov
Monica Wurtz/R7/USEPA/US



Monica Wurtz/R7/USEPA/US

05/19/2008 11:45 AM

To Chris Dudding/R7/USEPA/US@EPA, Stacie
Tucker/R7/USEPA/US@EPA
cc Diane Huffman/WWPD/R7/USEPA/US@EPA, Ken
Deason/R7/USEPA/US@EPA, Mary
Mindrup/R7/USEPA/US@EPA
Subject Re: letter to KDHE - draft / start 

Chris & Stacie,

Here is the letter to KDHE with comments from Mary, Ken & I. We strongly suggest that this letter not be sent via certified mail, out of respect for the state.
Thanks.


Monica Wurtz, Environmental Scientist
US Environmental Protection Agency
Water, Wetlands & Pesticide Division
Drinking Water Management Branch
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868
Chris Dudding/R7/USEPA/US



Chris Dudding/R7/USEPA/US



05/15/2008 01:59 PM

To Stacie Tucker/R7/USEPA/US@EPA
cc Diane Huffman/WWPD/R7/USEPA/US@EPA, Ken
Deason/R7/USEPA/US@EPA, Mary
Mindrup/R7/USEPA/US@EPA, Monica
Wurtz/R7/USEPA/US@EPA
Subject Re: letter to KDHE - draft / start 

I suggest that if you're going to remove that clause referencing variances/exemptions in the last paragraph, you should go ahead and remove the last two sentences altogether, leaving

"Please note that each System's responsibility to come into compliance with the statutory and regulatory requirements of the SDWA does not end with a demonstration of economic hardship."

as the final sentence.

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dudding.chris@epa.gov
Stacie Tucker/R7/USEPA/US



Stacie Tucker/R7/USEPA/US
05/15/2008 01:47 PM

To Chris Dudding/R7/USEPA/US@EPA, Monica
Wurtz/R7/USEPA/US@EPA, Ken
Deason/R7/USEPA/US@EPA
cc Diane Huffman/WWPD/R7/USEPA/US@EPA, Mary
Mindrup/WWPD/R7/USEPA/US
Subject Re: letter to KDHE - draft / start 

Hi all,

Here are my suggested changes, based on the feedback for the prior letter:
[attachment "EPA Ltr to KDHE about Pretty Prairie Nitrate Ltr 5.15.08.doc" deleted by Monica
Wurtz/R7/USEPA/US]

Sincerely,
Stacie

Stacie Tucker
U.S. EPA, Region 7
WWPD / WENF
Office 913.551.7715
Fax 913.551.9715
Tucker.Stacie@epa.gov

*Help EPA fight pollution by reporting potential environmental violations on EPA's website at:
<http://www.epa.gov/compliance/complaints/index.html>

Chris Dudding/R7/USEPA/US



Chris
Dudding/R7/USEPA/US
05/15/2008 12:13 PM

To Monica Wurtz/R7/USEPA/US@EPA, Stacie
Tucker/R7/USEPA/US@EPA
cc

Subject letter to KDHE - draft / start

I used prior letters as basis for structuring this one. Note, there are some policy issues that you will need to hash out w/ management, such as whether those dates are acceptable, and also what our enforcement policy is with regard to nitrate violators -- is it now a priority? Will we be reviewing nitrate violator systems over the next few months to ensure that systems are under an enforceable compliance schedule? If so, then do you want to say so under Art's signature?

[attachment "statePlanletter.doc" deleted by Monica Wurtz/R7/USEPA/US]

There may be other stuff that you want to put into this letter. Enjoy!

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dudding.chris@epa.gov

David Waldo, Chief
Public Water Supply Section
Kansas Department of Health and Environment
1000 SW Jackson Suite 420
Topeka, KS 66612

Dear Mr. Waldo:

Re: Public Water Systems Out of Compliance for Nitrates
Pretty Prairie Public Water System
PWS ID: KS2015501

We recently received correspondence from the city of Pretty Prairie, because its System has a documented history of exceeding the 10 ppm nitrate MCL. We provided you with a copy of our response to the city of Pretty Prairie, dated May 16, 2008, in deference to KDHE as the primacy agency for enforcement of drinking water violations in Kansas. In our May 16th letter to the city of Pretty Prairie about its System, we clarified that the provision of bottled water to the public is not an acceptable long-term solution to nitrate violations, and does not exempt its System from the SDWA requirement to comply with the nitrate MCL.

We notified the city of Pretty Prairie that our agency expects the Pretty Prairie PWS to work with KDHE to take decisive action to come into compliance with the nitrate MCL. Such actions should include, at a minimum, entry into a compliance agreement incorporating an enforceable schedule for the Pretty Prairie PWS to come into compliance with the nitrate MCL.

We suggest that it would be ideal for KDHE to have such an agreement in place with Pretty Prairie by no later than September 30, 2008, absent extenuating circumstances that make such a goal impractical. Such a compliance agreement between Pretty Prairie and KDHE should promote measurable progress towards compliance, via the inclusion of clear milestones, an expected compliance date, and clearly-stated consequences for failure to adhere to the schedule. We also suggest that the agreement should require Pretty Prairie PWS to achieve compliance with the nitrate MCL as soon as reasonably practicable. Please notify EPA once Pretty Prairie has been given measurable milestones and a date to return to compliance with the nitrate MCL.

EPA has reviewed a letter from the city of Pretty Prairie, dated April 16, 2008; as well as a copy of the Consent Order (96-E-0263) that the city of Pretty Prairie entered into with KDHE on October 15, 1996; and a copy of the KDHE Directive sent to the city of Pretty Prairie on July 20, 2007. EPA is willing to partner with KDHE to put an enforcement mechanism in place that will ensure the Pretty Prairie PWS achieves compliance as soon as reasonably practicable in order to protect the consumers of its drinking water system. We both have the goal to resolve the

nitrate MCL violations in all drinking water systems in Kansas. Our agency's current priority is the systems with long-term nitrate violations, including the Pretty Prairie PWS.

EPA has advised the city of Pretty Prairie that failure to comply with the requirements of the nitrate MCL, and thereby the SDWA, would lead to an enforcement action by KDHE or EPA. Failure to comply with the SDWA, including timely submission of the plans necessary to implement the recommendations of the feasibility study, may subject the system to an enforcement action brought by KDHE and/or EPA under the authority of the NPDWR and SDWA. If for any reason KDHE does not exercise its enforcement authority in a timely manner, EPA reserves the right to take enforcement action.

We recognize that systems often cite funding shortfalls as a reason for failure to meet one or more requirements of an enforceable compliance schedule. Systems making claims of insufficient funds or economic hardship must take steps, within a compliance schedule, to supply documentation supporting such claims. Failure to seek adequate funding, whether through tax levies, utility rate increases, or submissions of grant proposals, is not adequate justification for failure to meet the terms of an enforcement agreement, compliance schedule, or otherwise fail to show consistent progress towards compliance with the SDWA. Please note that each System's responsibility to come into compliance with the statutory and regulatory requirements of the SDWA does not end with a demonstration of economic hardship.

We encourage you to utilize the resources of the Region 7 Satellite Environmental Finance Center (SEFC), an organization associated with Boise State University which assists local governments with expanding their approach to environmental financing. The SEFC may be able to provide assistance to KDHE to more effectively determine whether Systems have the funds to install treatment, and also to help identify additional funding streams available to Systems. Additional information regarding the SEFC can be found on the internet at <http://efc.boisestate.edu/efc/>.

If you have any questions regarding these issues, please contact Stacie Tucker, of my staff, at (913) 551-7715.

Sincerely,

Diane Huffman, Chief
Water Enforcement Branch
Water, Wetlands and Pesticides Division

bcc: Monica Wurtz, WWPD/DRWM
Robert Dunlevy, WWPD/DRWM

CONCURRENCE:WWPD:WENF:Tucker:H:\WENF2008 Correspondence\Tucker\ EPA Ltr to KDHE about Pretty Prairie Nitrate Ltr 5.15.08.doc						
NAME	Tucker	Wurtz	Dudding	Mindrup	Huffman	
DIV/ BRANCH	WWPD/ WENF	WWPD/ DRWM	CNSL	WWPD/ DRWM	WWPD/ WENF	
SIGN						
DATE						



{In Archive} Fw: Pretty Prairie

Monica Wurtz to: Mary Mindrup

05/19/2008 01:00 PM

Cc: Ken Deason, Stacie Tucker, Chris Dudding, Diane Huffman

Archive:

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----- Forwarded by Monica Wurtz/R7/USEPA/US on 05/19/2008 12:59 PM -----



DWaldo@kdhe.state.ks.us

05/19/2008 12:55 PM

To Monica Wurtz/R7/USEPA/US@EPA

cc

Subject Re: Pretty Prairie

Monica, I do not anticipate KDHE requiring any specific action of Pretty Prairie, other than specified in the existing order, for the time being.

Dave

David F. Waldo, PE
Bureau of Water-Public Water Supply
Kansas Department of Health & Environment
1000 SW Jackson, Suite 420
Topeka KS 66612-1367
Phone 785 296 5503
Fax 785 296 5509

Wurtz.Monica@epamail.epa.gov

05/15/2008 11:10 AM

To DWaldo@kdhe.state.ks.us

cc

Subject Re: Pretty Prairie

Dave,

Just wanted to give you a 'heads up' on a letter that EPA Region 7 is sending to Pretty Prairie in response to their April 21, 2008 letter requesting a meeting with EPA. You will be sent a copy (leaving our office today or tomorrow). Basically, the message of the letter is that EPA appreciates the offer to meet with PP, but we will decline the meeting. KDHE is the primacy agency for enforcing the Nitrate MCL and we

encourage PP to work with KDHE to come into compliance with the Nitrate MCL as soon as reasonably possible.

Monica Wurtz, Environmental Scientist
US Environmental Protection Agency
Water, Wetlands & Pesticide Division
Drinking Water Management Branch
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868

DWaldo@kdhe.state.ks.us

04/24/2008 02:43 PM

To Monica Wurtz/R7/USEPA/US@EPA
cc
Subject Re: Pretty Prairie

It might be good to hold up on suggesting KDHE attend, also. We can still go even if you don't bring it up. Will have to consider PP will try to pit the state against EPA on this issue.

David F. Waldo, PE
Bureau of Water-Public Water Supply
Kansas Department of Health & Environment
1000 SW Jackson, Suite 420
Topeka KS 66612-1367
Phone 785 296 5503
Fax 785 296 5509
Wurtz.Monica@epamail.epa.gov

04/24/2008 09:02 AM

To dwaldo@kdhe.state.ks.us
cc
Subject Pretty Prairie

Dave,

Mary & I received a letter from the Mayor of Pretty Prairie on 4-21, requesting that we come meet with his city council regarding the nitrates/bottled water issue. I've attached a copy of the letter. We are meeting with our attorney today to discuss who, from EPA, needs to attend this meeting and what our approach will be. I was going through our Pretty Prairie file and I found the AO that was sent by EPA and the draft Consent Order from KDHE. Do you think you could send me an electronic copy of the final Consent Order and the Directive that was sent to Pretty Prairie? This will help us in our preparation for the meeting. We have not set a date for the meeting yet, but I feel it would be appropriate for KDHE to be in attendance - I will mention this to Pretty Prairie when I call to set up the meeting.

Thank you.

Monica Wurtz, Environmental Scientist
US Environmental Protection Agency
Water, Wetlands & Pesticide Division
Drinking Water Management Branch
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868[attachment "Pretty Prairie 4-16-08.pdf" deleted by Dave Waldo/Kdhe]



Stacie Tucker/R7/USEPA/US

05/19/2008 02:02 PM

To Monica Wurtz/R7/USEPA/US@EPA

cc Chris Dudding/R7/USEPA/US@EPA, Diane
Huffman/R7/USEPA/US@EPA, Ken
Deason/R7/USEPA/US@EPA, Mary
Mindrup/R7/USEPA/US@EPA

Subject Re: Fw: Pretty Prairie

Hi Monica,

What does Dave mean? I don't think the Pretty Prairie Order is in effect anymore. The most recent Order expired in 2003, and Pretty Prairie didn't meet those requirements.

KDHE has a Directive with the city, but it doesn't sound like Pretty Prairie is meeting those requirements either. Does Dave consider the Directive to be an Order, or does he consider the Directive to be an enforcement action?

How will KDHE hold the city accountable, since Pretty Prairie has been violating the Nitrate MCL since at least spring 1989 - including multiple enforcement actions?

[attachment "Pretty Prairie Nitrate Summary 5.19.08.doc" deleted by Monica Wurtz/R7/USEPA/US]

[attachment "Pretty Prairie 1996 Consent Order 96_E_0263.pdf" deleted by Monica

Wurtz/R7/USEPA/US]

[attachment "Pretty Prairie 2007 Directive.pdf" deleted by Monica

Wurtz/R7/USEPA/US]

FYI - the July 2007 KDHE Directive seems to allow bottled water indefinitely, under Paragraph 2.b.

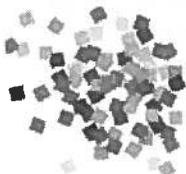
Also, the Feasibility Study requirement in the Directive has no implementation dates or milestone action dates - which is what I think we need to have Pretty Prairie commit to meet in the next 1-5 years (depending on construction costs, ability to pay, fees/rates, etc.).

Sincerely,
Stacie

Stacie Tucker
U.S. EPA, Region 7
WWPD / WENF
Office 913.551.7715
Fax 913.551.9715
Tucker.Stacie@epa.gov

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Monica Wurtz/R7/USEPA/US



Monica Wurtz/R7/USEPA/US

05/19/2008 01:00 PM

To Mary Mindrup/R7/USEPA/US@EPA

cc Ken Deason/R7/USEPA/US@EPA, Stacie
Tucker/R7/USEPA/US@EPA, Chris
Dudding/R7/USEPA/US@EPA, Diane
Huffman/R7/USEPA/US@EPA

Subject Fw: Pretty Prairie



----- Forwarded by Monica Wurtz/R7/USEPA/US on 05/19/2008 12:59 PM -----



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05/19/2008 12:55 PM

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Wurtz.Monica@epamail.epa.gov

05/15/2008 11:10 AM

To DWaldo@kdhe.state.ks.us

cc

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Monica Wurtz, Environmental Scientist
US Environmental Protection Agency
Water, Wetlands & Pesticide Division
Drinking Water Management Branch
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868

DWaldo@kdhe.state.ks.us

04/24/2008 02:43 PM

To Monica Wurtz/R7/USEPA/US@EPA

cc

Subject Re: Pretty Prairie

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David F. Waldo, PE
Bureau of Water-Public Water Supply
Kansas Department of Health & Environment
1000 SW Jackson, Suite 420
Topeka KS 66612-1367
Phone 785 296 5503
Fax 785 296 5509
Wurtz.Monica@epamail.epa.gov

04/24/2008 09:02 AM

To dwaldo@kdhe.state.ks.us

cc

Subject Pretty Prairie

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Thank you.

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Water, Wetlands & Pesticide Division
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901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868[attachment "Pretty Prairie 4-16-08.pdf" deleted by Dave Waldo/Kdhe]



{In Archive} Fw: Pretty Prairie

Stacie Tucker to: Monica Wurtz

Cc: Chris Dudding, Ken Deason, Mary Mindrup, Diane Huffman

This message is digitally signed.

05/19/2008 02:16 PM

Archive:

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Hi Monica,

Chris is right about our letter to KDHE. We should be sure that we mention that the no bottled water letter you sent Pretty Prairie in April. The 2007 Directive Paragraph 2.b. allowed bottled water, whereas the SDWA has a prohibition against prolonged use of bottled water as a treatment technique.

Sincerely,
Stacie

Stacie Tucker
U.S. EPA, Region 7
WWPD / WENF
Office 913.551.7715
Fax 913.551.9715
Tucker.Stacie@epa.gov

*Help EPA fight pollution by reporting potential environmental violations on EPA's website at:
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----- Forwarded by Stacie Tucker/R7/USEPA/US on 05/19/2008 02:14 PM -----



Chris Dudding/R7/USEPA/US

05/19/2008 02:11 PM

To Stacie Tucker/R7/USEPA/US@EPA

cc

Subject Re: Fw: Pretty Prairie

Seems like the letter we're drafting to go out under Diane's signature to KDHE is timely.

You may wish to consider addressing the Directive directly in the letter, including its lack of implementation/milestone dates and noting how Para 2.b, insofar as it allows bottled water indefinitely, is inconsistent with the SDWA and NPDWR and EPA's position.

Chris R. Dudding
Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101
913-551-7524
Facsimile 913-551-9524 or 7925
dudding.chris@epa.gov
Stacie Tucker/R7/USEPA/US



Stacie Tucker/R7/USEPA/US

05/19/2008 02:02 PM

To Monica Wurtz/R7/USEPA/US@EPA



cc Chris Dudding/R7/USEPA/US@EPA, Diane
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How will KDHE hold the city accountable, since Pretty Prairie has been violating the Nitrate MCL since at least spring 1989 - including multiple enforcement actions?



Pretty Prairie Nitrate Summary 5.19.08.doc



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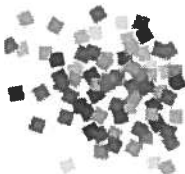
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Monica Wurtz/R7/USEPA/US



Monica Wurtz/R7/USEPA/US

05/19/2008 01:00 PM

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Subject Fw: Pretty Prairie

----- Forwarded by Monica Wurtz/R7/USEPA/US on 05/19/2008 12:59 PM -----



DWaldo@kdhe.state.ks.us

05/19/2008 12:55 PM

To Monica Wurtz/R7/USEPA/US@EPA

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(913) 551-7868

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04/24/2008 02:43 PM

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Monica Wurtz, Environmental Scientist
US Environmental Protection Agency
Water, Wetlands & Pesticide Division
Drinking Water Management Branch
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868[attachment "Pretty Prairie 4-16-08.pdf" deleted by Dave Waldo/Kdhe]



{In Archive} Fw: Pretty Prairie
Mary Mindrup to: Diane Huffman

05/19/2008 03:59 PM

History: This message has been replied to.
Archive: This message is being viewed in an archive.

I think you and I need to talk about Pretty Prairie. Maybe tomorrow before the manager's meeting?

Mary A. T. Mindrup
Chief, Drinking Water Management Branch
(913)551-7431
Mindrup.Mary@EPA.GOV

----- Forwarded by Mary Mindrup/R7/USEPA/US on 05/19/2008 03:58 PM -----



Stacie Tucker/R7/USEPA/US
05/19/2008 02:02 PM

To Monica Wurtz/R7/USEPA/US@EPA
cc Chris Dudding/R7/USEPA/US@EPA, Diane
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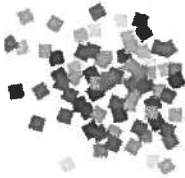
Sincerely,
Stacie

Stacie Tucker
U.S. EPA, Region 7
WWPD / WENF
Office 913.551.7715

Fax 913.551.9715
Tucker.Stacie@epa.gov

*Help EPA fight pollution by reporting potential environmental violations on EPA's website at:
<http://www.epa.gov/compliance/complaints/index.html>

Monica Wurtz/R7/USEPA/US



Monica Wurtz/R7/USEPA/US

05/19/2008 01:00 PM

To Mary Mindrup/R7/USEPA/US@EPA
cc Ken Deason/R7/USEPA/US@EPA, Stacie
Tucker/R7/USEPA/US@EPA, Chris
Dudding/R7/USEPA/US@EPA, Diane
Huffman/R7/USEPA/US@EPA
Subject Fw: Pretty Prairie

----- Forwarded by Monica Wurtz/R7/USEPA/US on 05/19/2008 12:59 PM -----



DWaldo@kdhe.state.ks.us

05/19/2008 12:55 PM

To Monica Wurtz/R7/USEPA/US@EPA
cc
Subject Re: Pretty Prairie

Monica, I do not anticipate KDHE requiring any specific action of Pretty Prairie, other than specified in the existing order, for the time being.

Dave

David F. Waldo, PE
Bureau of Water-Public Water Supply
Kansas Department of Health & Environment
1000 SW Jackson, Suite 420
Topeka KS 66612-1367
Phone 785 296 5503
Fax 785 296 5509

Wurtz.Monica@epamail.epa.gov

05/15/2008 11:10 AM

To DWaldo@kdhe.state.ks.us
cc
Subject Re: Pretty Prairie

Dave,

Just wanted to give you a 'heads up' on a letter that EPA Region 7 is sending to Pretty Prairie in response to their April 21, 2008 letter requesting a meeting with EPA. You will be sent a copy (leaving our office today or tomorrow). Basically, the message of the letter is that EPA appreciates the offer to meet with PP, but we will decline the meeting. KDHE is the primacy agency for enforcing the Nitrate MCL and we encourage PP to work with KDHE to come into compliance with the Nitrate MCL as soon as reasonably possible.

Monica Wurtz, Environmental Scientist
US Environmental Protection Agency
Water, Wetlands & Pesticide Division
Drinking Water Management Branch
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868

DWaldo@kdhe.state.ks.us

04/24/2008 02:43 PM

To Monica Wurtz/R7/USEPA/US@EPA
cc

Subject Re: Pretty Prairie

It might be good to hold up on suggesting KDHE attend, also. We can still go even if you don't bring it up. Will have to consider PP will try to pit the state against EPA on this issue.

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Kansas Department of Health & Environment
1000 SW Jackson, Suite 420
Topeka KS 66612-1367
Phone 785 296 5503
Fax 785 296 5509
Wurtz.Monica@epamail.epa.gov

To

04/24/2008 09:02 AM

dwaldo@kdhe.state.ks.us

cc

Subject Pretty Prairie

Dave,

Mary & I received a letter from the Mayor of Pretty Prairie on 4-21, requesting that we come meet with his city council regarding the nitrates/bottled water issue. I've attached a copy of the letter. We are meeting with our attorney today to discuss who, from EPA, needs to attend this meeting and what our approach will be. I was going through our Pretty Prairie file and I found the AO that was sent by EPA and the draft Consent Order from KDHE. Do you think you could send me an electronic copy of the final Consent Order and the Directive that was sent to Pretty Prairie? This will help us in our preparation for the meeting. We have not set a date for the meeting yet, but I feel it would be appropriate for KDHE to be in attendance - I will mention this to Pretty Prairie when I call to set up the meeting.

Thank you.

Monica Wurtz, Environmental Scientist
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Water, Wetlands & Pesticide Division
Drinking Water Management Branch
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7868[attachment "Pretty Prairie 4-16-08.pdf" deleted by Dave Waldo/Kdhe]



{In Archive} Re: Fw: Pretty Prairie 

Stacie Tucker to: Monica Wurtz

05/19/2008 02:02 PM

Cc: Chris Dudding, Diane Huffman, Ken Deason, Mary Mindrup

This message is digitally signed.

Archive:

This message is being viewed in an archive.

Hi Monica,

What does Dave mean? I don't think the Pretty Prairie Order is in effect anymore. The most recent Order expired in 2003, and Pretty Prairie didn't meet those requirements.

KDHE has a Directive with the city, but it doesn't sound like Pretty Prairie is meeting those requirements either. Does Dave consider the Directive to be an Order, or does he consider the Directive to be an enforcement action?

How will KDHE hold the city accountable, since Pretty Prairie has been violating the Nitrate MCL since at least spring 1989 - including multiple enforcement actions?



Pretty Prairie Nitrate Summary 5.19.08.doc



Pretty Prairie 1996 Consent Order 96_E_0263.pdf



Pretty Prairie 2007 Directive.pdf

FYI - the July 2007 KDHE Directive seems to allow bottled water indefinitely, under Paragraph 2.b.

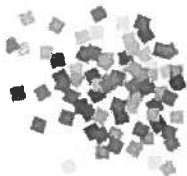
Also, the Feasibility Study requirement in the Directive has no implementation dates or milestone action dates - which is what I think we need to have Pretty Prairie commit to meet in the next 1-5 years (depending on construction costs, ability to pay, fees/rates, etc.).

Sincerely,
Stacie

Stacie Tucker
U.S. EPA, Region 7
WWPD / WENF
Office 913.551.7715
Fax 913.551.9715
Tucker.Stacie@epa.gov

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<http://www.epa.gov/compliance/complaints/index.html>

Monica Wurtz/R7/USEPA/US



Monica Wurtz/R7/USEPA/US

05/19/2008 01:00 PM

To Mary Mindrup/R7/USEPA/US@EPA

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05/19/2008 12:55 PM

To Monica Wurtz/R7/USEPA/US@EPA

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Monica Wurtz, Environmental Scientist

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To dwaldo@kdhe.state.ks.us

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Subject Pretty Prairie

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(913) 551-7868[attachment "Pretty Prairie 4-16-08.pdf" deleted by Dave Waldo/Kdhe]

Drinking Water System	PWS ID No.	Type of System	Population	Historic Nitrate Violations?	Duration as part of the KDHE Nitrate Strategy	KDHE entered into Nitrate Consent Order?	Nitrate Consent Order expired or terminated?	On-going violations or Issues? (As of 1QTR08 response to Unaddressed SNC List)
City of Pretty Prairie	KS2015501	Community Water System	615 (per the 2000 census)	<ol style="list-style-type: none"> 1. KDHE issued Administrative Order 89-E-10 on 2/13/1989 w/ compliance schedule to meet nitrate MCL. Order not appealed and became final. 2. KDHE issued Administrative Order 90-E-71 on 10/28/1990 for failure to comply w/ AO 89-E-10 & pay \$12,675 in penalties. Pretty Prairie appealed this order before it became final. 3. KDHE & Pretty Prairie entered into Consent Order 91-E-71 on 10/24/1991 for violations. 	The entire duration, ~1997-2004.	<p>Yes, 1996-2003</p> <p>KDHE Consent Order 96-E-0263 for Pretty Prairie on 10/15/1996</p>	<p>Expired in 2003</p> <p>No other formal enforcement action has been taken to date.</p> <p>KDHE Directive sent to the city of Pretty Prairie on July 20, 2007</p>	<p>Administrative Order (SFL) issued 10/16/96 - linked in SDWIS database.</p> <p>Directive (SFJ) issued 7/20/07 - linked in SDWIS database.</p> <p>City awaiting a letter from EPA regarding use of bottled water and KDHE's former Nitrate Strategy. (This was issued by EPA ~April 2008.)</p> <p>Feasibility study identified \$1.2 million treatment plant as most feasible option for compliance.</p>

				<p>Pretty Prairie agreed to comply w/ nitrate MCL by following compliance schedule & paying \$675 in civil penalty.</p> <p>4. KDHE Consent Order 96-E-0263 for Pretty Prairie on 10/15/1996</p> <p>5. Files reviewed by EPA R7 for FY03 Annual Program Evaluation (APE) indicated that the PWS was out of compliance with the 24 hour public notification requirement in 40 CFR 141.202</p>				
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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:

CASE No. 96-E- 0263

CITY OF PRETTY PRAIRIE, KANSAS
PUBLIC WATER SUPPLY ID #T4000

COMPLIANCE WITH K.A.R 1995 SUPP. 28-15-13(b),
ADMINISTRATIVE ORDER CASE No. 91-E-71,
PROCEEDING UNDER K.S.A. 1995 SUPP. 65-163

CONSENT ORDER

I. PRELIMINARY STATEMENT

The Kansas Department of Health and Environment (KDHE) and the City of Pretty Prairie (City), having agreed that settlement of this matter is in the best interest of all parties and the public, hereby represent and state as follows:

II. STATUTORY AUTHORITY

1. KDHE is a duly authorized agency of the state of Kansas, created by an act of the legislature. KDHE has general jurisdiction over matters involving public water supply and protection of public health under the authority of K.S.A. 1995 Supp. 65-163 *et seq.* The following Findings of Fact and Conclusions of Law are made and Consent Order issued under the authority vested in the Secretary of the Kansas Department of Health and Environment (Secretary) by K.S.A. 1995 Supp. 65-163.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. The City operates a public water supply system as defined by K.S.A. 65-162a. A public water supply system is defined as "a system for the provision to the public of piped water for human consumption, if such system has at least ten (10) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes any source, treatment, storage or distribution facilities under control of the operator of the system and used primarily in connection with the system, and any, source, treatment storage or distribution facilities not under such control but which are used in connection with such system."

3. K.S.A. 65-171m states in part, "The secretary of health and environment shall adopt rules and regulations for the implementation of this act. In addition to procedural rules and regulations, the

secretary may adopt rules and regulations providing for but not limited to: (a) primary drinking water standards applicable to all public water supply systems in the state. The primary drinking water standards may: (1) identify contaminants which may have an adverse effect on the health of persons; (2) specify for each contaminant either a maximum contaminant level that is acceptable in water for human consumption, ..."

4. K.S.A. 1995 Supp. 65-163 states in part: "(2) Whenever an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary."

5. As authorized by K.S.A. 65-171m, the secretary adopted a maximum contaminant level (MCL) for nitrate of 10 mg/l, measured as N, at K.A.R. 1995 Supp. 28-15-13(b).

6. Administrative order, Case No. 89-E-10 was issued to the City by KDHE on February 13, 1989. This order contained a schedule of actions for the City to follow to return to compliance with the nitrate MCL. This order was not appealed and became a final order of the Secretary.

7. On October 28, 1990, Administrative Order No. 90-E-71 was issued to the City for failure to comply with Administrative Order No. 89-E-10. Administrative Order No. 89-E-10 was included by reference. Administrative Order No. 90-E-71 assessed penalties of \$12,675 for failure to comply with Administrative Order No. 89-E-10. This Order was timely appealed.

8. On October 24, 1991, the City and KDHE entered into Consent Order No. 91-E-71. Administrative Orders 89-E-10 and 91-E-71 were included by reference. Under the Consent Order, the City waived its appeal of Administrative Order No. 90-E-71 and agreed to pay \$675 in civil penalty. The remaining penalty was dismissed on the condition that the City comply with a schedule to comply with the nitrate MCL.

9. In partial response to the consent agreement, the City constructed Well No. 5, which was placed into operation in November of 1994. At this time, Wells No. 3 and 4 were removed from service, and the City relied entirely on Well No. 5.

10. The nitrate levels in Well No. 5 have been as high as 11.31 mg/l in samples analyzed in the KDHE laboratory.

11. The City has expressed an interest in proceeding with a wellhead protection plan to protect the quality of water in the Pretty Prairie area, and to lower ambient groundwater nitrate levels.

12. K.S.A. 65-171r prohibits the following acts: "(c) the failure of a supplier of water under investigation to furnish information to the secretary under K.S.A. 65-163, and amendments thereto; (d) the failure of a supplier of water to comply with any final order of the secretary issued under the provisions of K.S.A. 65-163 or 65-163a, and amendments thereto; (e) the failure of a supplier of water to comply with a primary drinking water standard established under K.S.A. 65-171m, and amendments thereto unless a variance or exception has been granted;"

13. K.S.A. 65-171s states in part: "Any person who violates any provision of K.S.A. 65-171r shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not more than \$5,000 for each violation."

IV. CONSENT ORDER

14. Therefore, based on the above and pursuant to K.S.A. 1995 Supp. 65-163, the Secretary hereby orders and the City hereby consents to comply with the following Schedule of Actions.

Schedule of Actions

15. The city shall test each point of entry to its distribution system for nitrate at least quarterly, using the KDHE laboratory, or a KDHE-certified laboratory. The City shall increase the sampling frequency to either monthly or weekly if directed to do so by KDHE. Results shall be submitted to KDHE by the 10th day of January, April, July, and October summarizing the results of all samples taken and analyzed in the previous quarter.

16. When the test results indicate the nitrate levels exceed the MCL of 10 mg/l, the City shall take the following actions:

a. Issue public notice on a quarterly basis as required by K.A.R. 1995 Supp. 28-15-15a. Copies of the notice shall be furnished to all area health care providers including medical doctors, clinics, hospitals, and the Reno County Health Department. Copies shall also be provided to day care centers and commercial establishments serving the traveling public, and posted in any roadside parks served by the City water system.

b. The City shall provide free of charge, an alternate source of drinking water for all infants less than six months of age, mothers nursing infants less than six months of age, and pregnant women. The drinking water provided must meet the requirements of K.A.R. 28-15-13. If bottled water is chosen to meet this requirement, the City shall obtain a certification from the bottled water supplier that the bottled water meets the appropriate requirements of the FDA concerning the source of the water and monitoring of water quality.

17. The City shall adopt and implement its wellhead protection program according to the following schedule. The wellhead protection program shall conform with the Kansas Wellhead Protection Program. A progress report shall be submitted to KDHE within 10 days of the dates outlined in the schedule.

a. The city shall complete delineation of the wellhead protection area no later than March 31, 1997.

b. The city shall complete an inventory of existing and potential pollution sources within the wellhead protection area no later than June 30, 1997.

c. The city shall complete development of management strategies for the existing and potential pollution sources identified above, with particular emphasis given to sources of nitrate contamination of the groundwater, no later than September 30, 1997.

d. The city shall submit its wellhead protection plan to KDHE for review by October 31, 1997.

e. The city shall adopt and implement its wellhead protection plan no later than December 31, 1997.

18. If nitrate levels exceed 15 mg/l in two of three consecutive quarters, upon notice by KDHE, the City will obtain or prepare a formal feasibility study, including cost estimates, of obtaining a new source of water, blending existing sources of water to produce acceptable quality of water, purchasing water of acceptable quality from a neighboring public water supplier, providing treatment to reduce the nitrate concentration to an acceptable level, or any combination of these options. The City shall submit the feasibility study to KDHE within twelve months of receiving notice from KDHE.

19. If nitrate levels exceed 20 mg/l in two of three consecutive quarters, this consent agreement will be revised to include a schedule requiring the City to implement an option identified in paragraph 18 above.

20. The City shall submit quarterly reports to KDHE discussing its progress in each of the following areas as appropriate: implementing the wellhead protection program required in paragraph 17 above; completing the feasibility study required in paragraph 18 above, or implementing the option selected according to paragraph 19 above.

V. OTHER PROVISIONS

21. All actions required to be undertaken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. In any action by KDHE to enforce the terms of this Consent Order, the City agrees not to contest the authority or jurisdiction of the Secretary of Health and Environment to issue this Consent Order.

22. This Consent Order shall apply to and be binding upon KDHE and the City, its agents, successors, and assigns. No change in the ownership or corporate status of the City shall alter its responsibilities under this Consent Order.

23. The City shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The City shall provide a copy of this Consent Order to all contractors, sub-contractors, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services. Notwithstanding the terms of any contract, the City is responsible for compliance with this Consent Order and for insuring that its contractors and agents comply with this Consent Order.

24. The activities conducted under this Consent Order are subject to approval by KDHE, and the City shall provide all appropriate necessary information consistent with this Consent Order requested by KDHE.

25. The City agrees to meet every term and condition of this Consent Order. Failure to meet the terms and requirements of the Schedule of Actions for improvements, or any term or condition of, or scheduled date of performance in this Order, or any report, work plan or other writing prepared pursuant to and incorporated into this Order, shall constitute a violation of this Consent Order and may subject the City to further enforcement action including but not limited to the assessment of civil penalties not to exceed \$5,000 per day for each day in which such violation occurs or failure to comply continues.

26. The provisions of this Consent Order shall terminate upon the receipt by the City, of written notice from KDHE that the City has demonstrated that the terms of this Consent Order, including any additional tasks which KDHE has determined to be necessary, has been satisfactorily completed. Failure to complete the Schedule of Actions for improvements by the specified dates will subject the City to further enforcement action.

27. (a) The City shall perform the requirements under this Consent Order within the time limits set forth herein unless, the performance is prevented or delayed solely by events which constitute a force majeure. For purposes of this Consent Order a force majeure is defined as any event beyond the control of the City which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order. Such events do not include increased costs of performance or changed economic circumstances. Any delay caused in whole or in part by action or inaction by federal or state authorities shall be considered a force majeure and shall not be deemed a violation of any obligations required by this Consent Order.

(b) The City shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this Consent Order.

(c) The City shall notify KDHE in writing within seven days after becoming aware of an event which the City knew, or should have known, constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section shall constitute a waiver of the City's right to assert a force majeure claim and shall be grounds for KDHE to deny the City an extension of time for performance.

(d) Within seven days of the receipt of written notice from the City of a force majeure event, KDHE shall notify the City of the extent to which modifications to this Consent Order are necessary. In the event KDHE and the City cannot agree that a force majeure event has occurred, or if there is no agreement on the length of the extension, the dispute shall be resolved by the Director of Environment under the Dispute Resolution Procedure provided herein.

(e) Any modifications to any provision of this Consent Order shall not alter the Schedule For Improvement or completion of other tasks required by this Consent Order unless specifically agreed to by the parties in writing and incorporated into this Consent Order.

28. This Consent Order may be amended by mutual agreement of KDHE and the City. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties and shall be incorporated into this Consent Order.

29. Dispute Resolution Procedure

(a) The parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this Consent Order. If such dispute arises, the parties will endeavor to settle it by informal negotiations between themselves. If the parties cannot resolve the issue informally within a reasonable period of time, either of the parties may notify the other in writing stating specifically that informal negotiations have failed, that formal dispute resolution under this paragraph has commenced and stating its position with regard to the dispute and the reason therefore. A party receiving such a notice of dispute will respond in writing within ten (10) working days stating its position. The parties shall have an additional ten (10) working day period to prepare written arguments and evidence for submission to the other party. Any settlement shall be reduced to writing, signed by representatives of each party and incorporated into the Consent Order. If the parties are unable to reach an agreement following this procedure, the matter shall be referred to the Director of the Division of Environment, KDHE, who shall decide the matter and provide a written statement of his decision which shall be incorporated into the Consent Order.

(b) This dispute resolution procedure shall not preclude any party from having direct recourse to court if otherwise available by applicable law.

30. The requirements of this Consent Order represent the best professional judgement of KDHE at this time based on the available information. If circumstances change significantly so that data indicates an immediate threat of danger to the public health or safety or the environment or a significantly different threat other than the alleged deficiencies addressed herein, then KDHE reserves the right to modify dates or requirements herein as it deems reasonably necessary and the City reserves the right to appeal any such modifications or additional requirements.

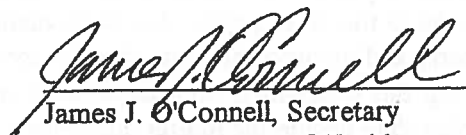
31. Nothing contained in this Consent Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to any person or entity not a party to this Order. This Order does not constitute a waiver, suspension, or modification of the requirements of applicable statutes or regulations which remain in full force and effect.

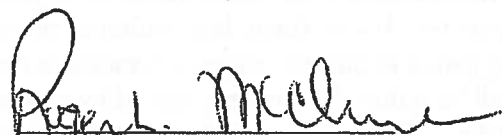
32. The parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order.

33. KDHE reserves the right to cancel or modify this agreement if new information concerning the health effects of nitrate is discovered.

34. Upon execution of this Consent Agreement, Case No. 91-E-71 is dismissed.

IT IS SO AGREED.


James J. O'Connell, Secretary
Kansas Department of Health
and Environment


City of Pretty Prairie

Dated: 15 Oct 96

Dated: 10-01-96



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Environment

DIRECTIVE

July 20, 2007

Curt Miller, Mayor
City of Pretty Prairie
119 West Main
PO Box 68
Pretty Prairie, Kansas 67570

Re: Public Water Supply: Nitrate MCL Non-Compliance
Federal ID No.: KS2015501
State ID No.: T4000

Dear Mayor Miller and City Council Members:

Drinking water delivered by the city of Pretty Prairie from Well 05/Treatment Plant 001 (Site ID #00123378) to its customers continues to exceed the maximum contaminant level (MCL) of 10 mg/L established for nitrate. The exceedance of the nitrate MCL has resulted in continuous violation of K.A.R. 28-15a-62. A summary of monitoring results is attached to this Directive.

A Nitrate Consent Order previously issued to the City on August 20, 1996 did not result in compliance and has since expired. Therefore, in order to address the continued violations, the city of Pretty Prairie is hereby directed to:

1. Sample the water for nitrate at least once every three months (quarterly). The sampling frequency shall be increased to either monthly or weekly if instructed to do so in writing by KDHE. The City may use the KDHE laboratory or a KDHE-certified private laboratory for analysis. If a private laboratory is used, nitrate results shall be submitted to KDHE - Bureau of Water by the 10th day of January, April, July and October for the previous quarter.
2. When test results indicate the nitrate levels exceed the MCL of 10 mg/L at the point of entry, the city of Pretty Prairie shall take the following actions:
 - a. Issue public notice to all customers served **as soon as possible within 24 hours** in accordance with K.A.R. 28-15a-202. Copies of the notice shall be furnished to the county health department. A copy of the notice is also required to be submitted to the KDHE within 10 days of delivering such notice to your customers.

- b. Provide, free of charge, an alternate source of drinking water for all infants less than six months of age, mothers who are nursing infants less than six months of age, and pregnant women. The drinking water provided must meet the requirements of K.A.R. 28-15a-23. If bottled water is chosen to meet this requirement, the city of Pretty Prairie shall obtain a certification from the bottled water supplier that the bottled water meets the appropriate requirements of the U.S. Food and Drug Administration (FDA).
3. The city of Pretty Prairie shall obtain the services of a Kansas-licensed professional engineer to prepare a formal feasibility study, including cost estimates to comply with the nitrate MCL. The city of Pretty Prairie shall submit the Feasibility Study to the KDHE by **December 20, 2007**. The city of Pretty Prairie and the KDHE will jointly review the results of the feasibility study and determine a course of action. At a minimum, the feasibility study shall address the following options:
 - a. Obtaining a new source of raw water,
 - b. Obtaining water of acceptable quality from another public water supply,
 - c. Treatment options to reduce nitrate, including the feasibility of blending existing sources of water to produce acceptable quality water, and
 - d. If a new source can be obtained, minimizing the use of, or removing from service, the individual water well causing the problem.

Please submit the above mentioned items to the KDHE; Public Water Supply Section at 1000 SW Jackson, Suite 420; Topeka, KS 66612 as indicated. If you have any questions or need any assistance regarding this matter, please contact Kelly Kelsey at (785) 296-6297.

Sincerely,



Karl W. Mueldener, P.E.
Director, Bureau of Water

Attachment

KWM:kdk

pc: Reno County Health Department
KDHE-SCDO
DRP/PJC/DCS/1.0 File

ATTACHMENT

Nitrate results in **red bold type** are in violation of the MCL.

SUMMARY OF NITRATE RESULTS 1995 – Present

FEDERAL ID	SYSTEM NAME	COLLECT DATE	ANALYTE	RESULT	UNIT
KS2015501	PRETTY PRAIRIE, CITY OF	June 19, 2007	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 13, 2007	NITRATE	14	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 1, 2006	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 20, 2006	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	January 10, 2006	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	October 12, 2005	NITRATE	7	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	August 1, 2005	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 31, 2005	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	February 14, 2005	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	December 6, 2004	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	August 23, 2004	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	June 12, 2004	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	February 23, 2004	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	April 7, 2003	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	September 25, 2000	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	August 24, 2000	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	January 31, 1997	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 16, 1996	NITRATE	16	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 16, 1996	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 26, 1996	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 26, 1996	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	October 25, 1995	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	September 27, 1995	NITRATE	14	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	September 26, 1995	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	July 28, 1995	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	June 28, 1995	NITRATE	16	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	June 28, 1995	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	April 19, 1995	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	April 19, 1995	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 30, 1995	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 30, 1995	NITRATE	15	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 30, 1995	NITRATE	16	MG/L



{In Archive} Fw: Pretty Prairie

Stacie Tucker to: Monica Wurtz, Chris Dudding

05/19/2008 05:31 PM

Cc: Diane Huffman, Mary Mindrup

This message is digitally signed.

Archive: This message is being viewed in an archive.

Hi Monica & Chris,

I think that we need to include some sort of timeframe expectation for KDHE to resolve the nitrate MCL violations at this PWS. I think this might give KDHE more leverage in getting Pretty Prairie to move towards compliance, if we're in the supportive role as EPA, "gorilla in the closet."

I don't think the tone of our letter should change toward KDHE, but I think that KDHE should be able to use the letter to support actions that they need to take to get Pretty Prairie and at least four other PWSs that have nitrate MCL violations to make every effort to return to compliance (RTC).

1. City of Argonia, PWS ID # KS2019116 - Nitrate Consent Order expires in 2010.
2. City of Arlington, PWS ID # KS2015511 - Nitrate Consent Order expires in 2010.
3. Harper Co. RWD 4, PWS ID # ? - Nitrate Consent Order expires in 2010.
4. Norwich, PWS ID # ? - Nitrate Consent Order expires in 2011.

I think we should copy the city of Pretty Prairie in our letter to KDHE, so that Pretty Prairie sees our coordination with KDHE. That way the city can see that EPA is coordinating with the state, and (hopefully) Pretty Prairie won't try to play KDHE against EPA or vice versa.

- Pretty Prairie has had enforcement actions with KDHE since 1989, with very little progress towards full RTC with the nitrate MCL.
- I think it's important that we use clear dates and consequences to get our point across, especially if we copy Pretty Prairie in our letter to KDHE.
- All of the KDHE Orders had compliance steps, but none of the KDHE Orders had hard and fast milestone dates that Pretty Prairie had to meet to RTC with a rule that's been in place for nearly 20 years.

Can we include something like this in the letter...

"EPA recommends that KDHE, as the primacy agency, (immediately) refer the city of Pretty Prairie for formal enforcement by EPA for the following reasons:

1. If KDHE and the city of Pretty Prairie cannot reach an enforceable compliance agreement by December 31, 2008,
2. If the city of Pretty Prairie cannot provide proof that it will be able to comply with the nitrate MCL within 3 years of the date of this letter (to KDHE),
3. If the city of Pretty Prairie does not begin to implement a plan to achieve full compliance with the SDWA, including providing progress reports to KDHE within 1 year of the date of this letter (to KDHE),
4. If the city of Pretty Prairie cannot provide proof that it has a significant economic hardship to meet the nitrate MCL requirement, after coordinating with the SEFC within 1 year of the date of this letter (to KDHE).

EPA will partner with KDHE to ensure that violations of the nitrate MCL and lack of compliance with the SDWA do not pose further harm to public health or the environment. EPA has many enforcement tools available to persuade violators to return to compliance with the federal SDWA. If EPA deems it necessary, we have the enforcement authority to seek \$11,500 per violation per day pursuant to the SDWA."

- I'm not sure what our administrative penalty is within SDWA, but I think that it might get Pretty Prairie's

- attention - both our enforcement support of KDHE and the potential EPA enforcement consequences.
- If KDHE does refer Pretty Prairie to EPA for enforcement, then EPA's options to address the violations haven't been limited in correspondence.
 - This way we can move forward with whatever action we need to take, while still supporting KDHE as the primacy agency
 - We can be sure that KDHE and Pretty Prairie are aware of what timeframe we expect significant good faith efforts (or proof of inability to pay) and/or RTC to occur - rather than a flexibly interpreted "as soon as reasonably practicable".
 - We don't want to have to wait another 3 years for proof that Pretty Prairie hasn't complied with the requirements of the nitrate MCL in the NPDWR & SDWA.
 - I think it clarifies the supporting message that we're involved (supporting KDHE's actions) to achieve compliance with this PWS within a specific timeframe.

I agree with your edits:



EPA Ltr to KDHE about Pretty Prairie Nitrate Ltr 5.19.08.doc

Sincerely,
Stacie

Stacie Tucker
U.S. EPA, Region 7
WWPD / WENF
Office 913.551.7715
Fax 913.551.9715
Tucker.Stacie@epa.gov

*Help EPA fight pollution by reporting potential environmental violations on EPA's website at:
<http://www.epa.gov/compliance/complaints/index.html>


----- Forwarded by Stacie Tucker/R7/USEPA/US on 05/19/2008 04:28 PM -----

Monica Wurtz/R7/USEPA/US

05/19/2008 03:53 PM

To Stacie Tucker/R7/USEPA/US@EPA

cc

Subject Re: Fw: Pretty Prairie 

Stacie,

I believe Dave was referring to the Directive, but I am not positive about that. KDHE considers the Directive to be an enforcement action and so far Pretty Prairie has met the requirements by having the feasibility study completed. You are correct in that the Directive does not contain implementation dates or compliance milestones, which is why it is important that we send our letter to KDHE. The letter is basically telling KDHE that we expect them to put PP on a schedule to implement an option from the feasibility study. If not, KDHE needs to either pursue further enforcement action, or EPA will take action.

If you feel more comfortable by putting in a return to compliance deadline for PP, go for it. I would give them at least 3 years though.

Thanks.
Monica

Stacie Tucker/R7/USEPA/US

David Waldo, Chief
Public Water Supply Section
Kansas Department of Health and Environment
1000 SW Jackson, Suite 420
Topeka, KS 66612

Dear Mr. Waldo:

Re: Public Water Systems Out of Compliance for Nitrates
Pretty Prairie Public Water System
PWS ID: KS2015501

We recently received correspondence from the city of Pretty Prairie, because its System has a documented history of exceeding the 10 ppm nitrate MCL. We provided you with a copy of our response to the city of Pretty Prairie, dated May 16, 2008, in deference to KDHE as the primacy agency for enforcement of drinking water violations in Kansas. In our May 16th letter to the city of Pretty Prairie about its System, we clarified that the provision of bottled water to the public is not an acceptable long-term solution to nitrate violations, and does not exempt its System from the SDWA requirement to comply with the nitrate MCL.

We notified the city of Pretty Prairie that our agency expects the Pretty Prairie PWS to work with KDHE to take decisive action to come into compliance with the nitrate MCL. Such actions should include, at a minimum, entry into a compliance agreement incorporating an enforceable schedule for the Pretty Prairie PWS to come into compliance with the nitrate MCL.

We suggest that it would be ideal for KDHE to have such an agreement in place with Pretty Prairie by no later than September 30, 2008, absent extenuating circumstances that make such a goal impractical. Such a compliance agreement between Pretty Prairie and KDHE should promote measurable progress towards compliance, via the inclusion of clear milestones, an expected compliance date, and clearly-stated consequences for failure to adhere to the schedule. We also suggest that the agreement should require Pretty Prairie PWS to achieve compliance with the nitrate MCL as soon as reasonably practicable. Please notify EPA once Pretty Prairie has been given measurable milestones and a date to return to compliance with the nitrate MCL.

EPA has reviewed a letter from the city of Pretty Prairie, dated April 16, 2008; as well as a copy of the Consent Order (96-E-0263) that the city of Pretty Prairie entered into with KDHE on October 15, 1996; and a copy of the KDHE Directive sent to the city of Pretty Prairie on July 20, 2007. EPA is willing to partner with KDHE to put an enforcement mechanism in place that will ensure the Pretty Prairie PWS achieves compliance as soon as reasonably practicable in order to protect the consumers of its drinking water system. We both have the goal to resolve the nitrate MCL violations in all drinking water systems in Kansas. Our agency's current priority is the systems with long-term nitrate violations, including the Pretty Prairie PWS.

EPA has advised the city of Pretty Prairie that failure to comply with the requirements of the nitrate MCL, and thereby the SDWA, would lead to an enforcement action by KDHE or EPA. Failure to comply with the SDWA, including timely submission of the plans necessary to implement the recommendations of the feasibility study, may subject the system to an enforcement action brought by KDHE and/or EPA under the authority of the NPDWR and SDWA. If for any reason KDHE does not exercise its enforcement authority in a timely manner, EPA reserves the right to take enforcement action.

We recognize that systems often cite funding shortfalls as a reason for failure to meet one or more requirements of an enforceable compliance schedule. Systems making claims of insufficient funds or economic hardship must take steps, within a compliance schedule, to supply documentation supporting such claims. Failure to seek adequate funding, whether through tax levies, utility rate increases, or submissions of grant proposals, is not adequate justification for failure to meet the terms of an enforcement agreement, compliance schedule, or otherwise fail to show consistent progress towards compliance with the SDWA. Please note that each System's responsibility to come into compliance with the statutory and regulatory requirements of the SDWA does not end with a demonstration of economic hardship.

We encourage you to utilize the resources of the Region 7 Satellite Environmental Finance Center (SEFC), an organization associated with Boise State University which assists local governments with expanding their approach to environmental financing. The SEFC may be able to provide assistance to KDHE to more effectively determine whether Systems have the funds to install treatment, and also to help identify additional funding streams available to Systems. Additional information regarding the SEFC can be found on the internet at <http://efc.boisestate.edu/efc/>.

If you have any questions regarding these issues, please contact Stacie Tucker, of my staff, at (913) 551-7715.

Sincerely,

Diane Huffman, Chief
Water Enforcement Branch
Water, Wetlands and Pesticides Division

bcc: Monica Wurtz, WWPD/DRWM
Robert Dunlevy, WWPD/DRWM

CONCURRENCE:WWPD:WENF:Tucker:H:\WENF\2008 Correspondence\Tucker\ EPA Ltr to KDHE about Pretty Prairie Nitrate Ltr 5.19.08.doc						
NAME	Tucker	Wurtz	Dudding	Mindrup	Huffman	
DIV/ BRANCH	WWPD/ WENF	WWPD/ DRWM	CNSL	WWPD/ DRWM	WWPD/ WENF	
SIGN						
DATE						



{In Archive} Fw: Pretty Prairie
Mary Mindrup to: Diane Huffman

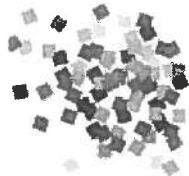
05/20/2008 07:23 AM

Archive: This message is being viewed in an archive.

It is slightly out of date such as we now have a copy of KDHE's order.

Mary A. T. Mindrup
Chief, Drinking Water Management Branch
(913)551-7431
Mindrup.Mary@EPA.GOV

----- Forwarded by Mary Mindrup/R7/USEPA/US on 05/20/2008 07:23 AM -----



Monica Wurtz/R7/USEPA/US

05/19/2008 04:04 PM

To Mary Mindrup/R7/USEPA/US@EPA

cc

Subject Re: Fw: Pretty Prairie



Pretty Prairie PWS history.doc

Sorry, forgot the attachment.

Mary Mindrup/R7/USEPA/US



Mary Mindrup/R7/USEPA/US

05/19/2008 03:58 PM

To Monica Wurtz/R7/USEPA/US@EPA

cc

Subject Fw: Pretty Prairie

Do you know if a chronology was ever put together? I am not asking you to do one.

thanks,

Mary A. T. Mindrup
Chief, Drinking Water Management Branch
(913)551-7431
Mindrup.Mary@EPA.GOV

----- Forwarded by Mary Mindrup/R7/USEPA/US on 05/19/2008 03:57 PM -----



Diane
Huffman/R7/USEPA/US

05/19/2008 01:14 PM

To "Mary Mindrup" <Mindrup.Mary@epamail.epa.gov>

cc

Subject Pretty Prairie

I am planning on going over the Pretty Prairie situation with Rich Hood prior to letter going out. Am

thinking that we might be wise to contact congressionals to inform them of this situation. Are you aware of any chronology that has been done regarding the issues at this system? Thanks.

History of Pretty Prairie Public Water Supply
Pretty Prairie, Kansas

Population 600

1979 – 1993 – SDWIS data indicates nitrate levels varying between 13 – 25 mg/L.

January 1994 – EPA issues an Administrative Compliance Order

June 1994 – An Amended Administrative Compliance Order on Consent is issued by EPA requiring Pretty Prairie to achieve compliance with the MCL for nitrate.

June 1995 – The city chose to drill new well(s) and achieves compliance

1996 - current – SDWIS data indicates that nitrate exceedances. Levels range from 11 to 14.

August 1996 – KDHE issued a Consent Order. EPA does not currently have a copy of the executed Order, but a draft indicates that the Order commits the city to participate in the Kansas Wellhead Protection Program, and contains elements of the Kansas Nitrate Compliance Strategy. Additional, a KDHE letter indicates that EPA agreed to drop its Administrative Order to Pretty Prairie after the KDHE Consent Order is executed.

March 1997 – KDHE/EPA execute the Kansas Nitrate Strategy.

